

REMARKS

In the Office Action, the Examiner requires restriction of the application to one of the following “patentably distinct species of the claimed invention:”

Group I. Figures 1 to 4; and

Group II. Figures 5 and 6.

Election

Applicants elect, with traverse, to prosecute the generic and Group I claims (for the reasons provided below, each of the Group I claims is generic). Accordingly, applicant elects to prosecute claims 1-11 and 21.

Traversal

The Examiner asserts with no supporting reasoning or argument that the application contains “patentably distinct species of the claimed invention.” In fact, the two groups of claims include substantial overlap and, especially when considering that the “Group II invention” can be found only in the dependent claims, the groups take on a genus-species relationship rather than a species-species relationship as posited by the Examiner. For example, claim 12 (which depends from claim 1) necessarily includes all of the elements of claim 1 (which recites an expandable fixation member 20 and an expansion plug 21 as illustrated in Figures 1 to 4) and further recites that the expandable fixation member of claim 1 is divided into a tip 51 and an expansion member 50 as illustrated in Figures 4 to 6. Accordingly, the Group I invention is entirely generic to the Group II invention and prior art said to be effective to make a prima facie rejection of claim 12 would necessarily apply to claim 1 as well. Accordingly, Applicant submits that it is more logical and efficient to search and examine these claims together.

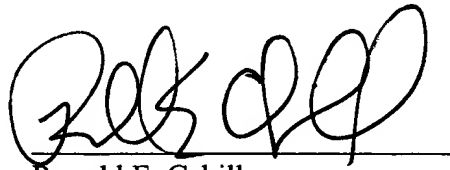
Conclusion

Applicants request that the Examiner reconsider the restriction requirement. In addition, in the event that a generic claim is found to be allowable, Applicants reserve the right to have the non-elected claims considered provided that such claims are written in dependent form or otherwise include all of the limitations of an allowed generic claim as provided in 37 C.F.R. § 1.141.

If the Examiner believes that an interview would facilitate the resolution of any outstanding issues, he is kindly requested to contact the undersigned.

Respectfully submitted,

Date: 10/16/03

A handwritten signature in black ink, appearing to read 'R. E. Cahill', written over a horizontal line.

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